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MILLENNIUM CHALLENGE CORP 0166

C O N F I D E N T I A L LUSAKA 000583

E.O. 12958: DECL: 08/17/2019

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SUBJECT: FORMER PRESIDENT CHILUBA ACQUITTED OF CORRUPTION CHARGES

REF: LUSAKA 275

Classified By: Ambassador Donald Booth for reasons 1.4 (b) and (d)

¶1. (SBU) Former Zambian President Frederick Chiluba was acquitted August 17 of six counts of theft by public servant totaling USD 500,000. The 445-page judgment, handed down by Ndola High Court Registrar Jones Chinyama, took over seven hours to read and ultimately concluded that the prosecution "failed to prove their case beyond a reasonable doubt." Chiluba was alleged to have routed Government of the Republic of Zambia (GRZ) funds through third parties to Access Financial Services (AFS) accounts controlled by co-defendants Faustin Kabwe (AFS Chief Executive Officer) and Aaron Chungu (AFS Director) who were both found guilty of theft and possession of state funds. The USD 500,000 in question was allegedly used to pay school fees for Chiluba's children and to purchase private residences for former ministers Eric Silwamba (presidential affairs) and Vincent Malambo (legal affairs). While the acquittal marks the likely end of this case, which Chiluba's legal antics and health issues helped drag out over eight years, it is unclear what will happen with the 2007 United Kingdom high court ruling of a civil case that found Chiluba and others liable for misappropriating USD 41 million of GRZ public resources. That finding, labeled by Chiluba as "racist" and "obscene", has yet to be registered and enforced in Zambia.

¶2. (C) Central to the criminal case was the origin of funds in the secret account known as Zamtrop (which was used by Zambian intelligence services). Chiluba described in unsworn testimony earlier this year how his "personal funds" came to be commingled in the account that was used to pay for the former ministers' houses. His lawyers previously admitted that Chiluba put contributions, supposedly collected from Zambian and international supporters of his ruling Movement for Multiparty Democracy (MMD), into the Zamtrop account. Chiluba suggested that he did so at the behest of the former director general of intelligence, who recommended the money pass through Zamtrop for security purposes. While the money used for the homes of Chiluba's former ministers came from the secret account, the prosecution failed to demonstrate that the money spent actually belonged to the GRZ. Prior to the ruling, Embassy contacts suggested that the prosecution had a very difficult time linking anything directly to Chiluba, possibly explaining why his cohorts were found guilty while he was acquitted.

¶3. (C) The prosecution was unable to directly question Chiluba about these funds because of Chiluba's decision to provide unsworn testimony on the matter. While it was initially believed that his refusal to testify under oath would weaken his defense, it worked to Chiluba's advantage, because the prosecution could not cross examine Chiluba about the specific origins of his funding (Note: Co-defendants Kabwe and Chungu both provided sworn testimony). Without being able to specifically prove that the USD 500,000 in question was stolen from GRZ coffers, the prosecution's case collapsed. UK lawyers who investigated the 2007 civil case against Chiluba told PolOff that they had to redo most of the testimonies and acquie their own evidence as a result of the shoddy wrk by the Task Force on Corruption (responsible for prosecuting Chiluba, supporting the argument that the prosecution failed to present an adequate rgument in a

criminal case where the evidentiary standard was higher than for the civil case.

¶4. (SBU) Chiluba held a defiant press conference after the verdict was announced during which he described his acquittal as God's blessing. He suggested that "for eight long years the devil has tried to put stigma of a thief on me, but God has dealt with the devil" and chastised "those who would put their president at the mercy of foreigners." Chiluba spokesman Emmanuel Mwamba echoed the former president's anti-Western message, suggesting that "the British in particular attempted to use this (case) as an example to Africa. And I'm glad the judiciary in Zambia has refused to be used for such an international scheme." Chiluba also cautioned the press "to be careful not to play with God's anointed people" and promised he would hold a more detailed press conference in two weeks.

¶5. (C) Comment: While the ruling is clearly disappointing to Western donors and those Zambians actively engaged in the anti-corruption effort, the reaction by everyday Zambians and the GRZ appears muted so far. Chiluba and his supporters seem to recognize that it is hard for observers to publicly criticize the process. He will likely continue playing the role of persecuted public servant who has been vindicated by a free and fair judicial system. Despite being found guilty of separate corruption charges by a UK court, blame is not likely with Magistrate Chinyama. Prior to the acquittal, embassy contacts, including Task Force prosecutors, said they were happy with the way Chinyama handled the case. Chinyama even told the prosecution that they should have called the former intelligence chief to testify about the nature of the funds used to purchase the houses in question. If the GRZ wanted to ensure that Chiluba was not seen as being above the law, it could finally register the UK judgment handed down two years ago and seize the millions owed to it by virtue of the ruling. Judging from public and GRZ reaction to the verdict, it seems unlikely the GRZ will give the appearance of favoring the UK ruling over its own court's exoneration. Both on principle and for practical reasons (the GRZ needs the USD 41 million at stake), we will continue to urge the GRZ to proceed with registering the UK judgment. End Comment.

BOOTH